

ORDINANCE
City of Portland, Tennessee

No. 23 - 06

FIRST READING

AN ORDINANCE TO REPEAL AND REPLACE THE ORIGINAL DEVELOPER'S AGREEMENT AND AUTHORIZE THE MAYOR TO ENTER INTO A NEW DEVELOPER'S AGREEMENT WITH STEVE SOMERVILLE FOR THE DEVELOPMENT OF ORCHARD PLACE SUBDIVISION

WHEREAS, the City of Portland, Tennessee has determined that improvements need to be made to City infrastructure including the sewer system, water system, stormwater system and roadway as outlined in the attached agreement; and

WHEREAS, the Portland Municipal-Regional Planning Commission has approved the preliminary plat and construction drawings for Orchard Place Subdivision on W. Market St and W.B. Dye Road; and

WHEREAS, the developer of Orchard Place Subdivision and the City have agreed to share in the cost of certain improvements to City infrastructure including the water system, stormwater system, and roadway as outlined in the attached agreement; and

WHEREAS, the Developer has requested that the City repeal the original developer's agreement approved by the BOMA on September 14, 2020 which included the City's contribution amount of \$55,400.00 and replace it with Exhibit A of this document; and

WHEREAS, the total financial change to the Developer's Agreement is an additional \$7,111.77 for material cost increases and will bring the City's total contribution to \$62,511.77; and

NOW THEREFORE, BE IT RESOLVED by the Mayor and Board of Aldermen of the City of Portland authorize the Mayor to enter into the attached, as Exhibit A, Developer's Agreement for Orchard Place Subdivision; and

BE IT FURTHER RESOLVED, that the Resolution shall become effective upon its passage, the public welfare requiring it.

Mike Callis, Mayor

Patricia Keen, City Recorder

Passed First Reading: February 6, 2023

Passed Second Reading:

SUBDIVISION DEVELOPMENT AGREEMENT

CITY OF PORTLAND, TENNESSEE

This Development Agreement is made and entered into on this __ day of _____, 2023 by and between Steve Somerville, ("Developer"), and the City of Portland, Tennessee, a municipality organized and existing under the laws of the State of Tennessee ("City").

WITNESSETH:

WHEREAS, the Developer desires to develop a subdivision to be known as CDI Farms Section 1; and

WHEREAS, the preliminary plat of said subdivision received final approval from the Portland Municipal-Regional Planning Commission (the "Planning Commission") on the 12th day of June, 2018, pursuant to the laws of the State of Tennessee and the Subdivision Regulations of the City; and

NOW, THEREFORE, in consideration of the premises and mutual covenants of the parties herein contained, it is agreed and understood as follows:

Section 1: CONSTRUCTION OF SUBDIVISION

The Developer shall construct all required improvements and complete its subdivision in accordance with the City's Subdivision Regulations, the approved construction plans, and the preliminary subdivision plat approved by the Planning Commission on the 10th day of April, 2018. Required improvements may include, but are not limited to, all streets, storm drainage systems, storm water detention and retention structures, water systems, fire hydrants, sanitary sewer, street lights, all other utilities, curb and gutter, sidewalks, lot and subdivision corner monuments, street name signs, traffic control signs and devices, fences, amenities, and any required off-site improvements. The Developer shall pay for all materials and labor necessary to install and complete the required improvements, unless specified elsewhere in this agreement.

1.1 EXCEPTION OF CONSTRUCTION

1.1.1 W.B. Dye Road

(A) Sidewalk

The Developer shall provide approximately 480 feet of five (5) foot sidewalks along W.B. Dye Road as required by the subdivision regulations, this shall include the crosswalk, ramps, and detectable warnings on Kerr Way. The sidewalk shall be a turndown at the edge of the road.

(B) Existing Street (W.B. Dye Road)

The City shall provide a monetary contribution to the developer in the amount of \$37,771. This contribution shall include the stone, & asphalts (Type E Mix Top Coat & B-Mod Binder) for the six (6) feet widening of W.B. Dye Road for 480 feet and the additional 180 feet taper. The contribution shall also include the overlay of existing W.B. Dye Road from the W. Market Street intersection to the end of the taper and all striping. The Developer shall provide all labor and excavation for installation.

(C) Drainage

The City shall provide a monetary contribution to the developer in the amount of \$7,029.07. This contribution shall include a cast in place double inlet catch basin and eight (8) feet of 18" reinforced concrete pipe. The Developer shall connect to the catch basin. The Developer shall provide all labor and excavation for installation.

(D) Utility Poles

The Developer shall be responsible for coordinating and relocating the utility pole within the return radius of Kerr Way.

(E) Kerr Way

The Developer shall purchase and install at his/her expense the stop bar, stop sign, and street sign at the intersection of Kerr Way and W.B. Dye Road.

(F) Under this agreement the City shall be responsible for all material cost for the aforementioned improvements along W.B. Dye Road. The Developer shall be responsible for the installation, labor, design, layout, and excavation except for the W.B. Dye Waterline Replacement Project.

(G) Total Contribution of W.B. Dye Road - \$44,800.07

1.1.2 West Market Street

(A) Sidewalk

The Developer shall provide approximately 250 feet of five (5) foot sidewalks along W. Market Street as required by the subdivision regulations. This sidewalk shall be located behind the existing ditch on W. Market Street.

(B) Existing Street (W. Market Street)

Existing W. Market Street varies between 20 and 21 feet and does not require a widening at this time.

(C) Existing street drainage

The existing ditch on W. Market Street is sufficient and does not need to be expanded.

(D) Development Drainage

The drainage swale along the eastern property boundary shall be installed as required by Review Letter dated 06/08/2018, attached as Exhibit B, and developer shall ensure drainage from Kerr Way Cul-De-Sac and Lots 7, 8, 9, 10, 11, & 12 enter the detention pond on Lots 15 and 16 without a negative impact on the residential structures.

(H) The Developer shall be responsible for the material, installation, labor, design, layout, and excavation cost for all improvements along W. Market Street.

1.1.3 Intersection of W.B. Dye Road & West Market Street

(A) Sidewalk

The City shall bear the cost of relocating the 10 feet by 10 feet trailhead and associated bench. The City shall also bear the cost of the crosswalk, ramps, and detectable warning transitions required at the intersection. The City shall provide a monetary contribution to the developer in the amount of \$6,150. The Developer shall be responsible for connecting sidewalks to the City's 10 feet by 10 feet trailhead.

(B) Drainage

The City shall bear the cost for the replacement of a 12" pipe. The pipe shall be upgraded to a 15" reinforced concrete pipe for approximately 60 feet. A pour in place single inlet catch basin shall also be installed at the northwest corner of the intersection. The City shall bear the cost for the headwall at the southwest corner of the intersection. The City shall provide a monetary contribution to the developer in the amount of \$11,561.70. The Developer shall provide all labor and excavation for installation.

(C) Total Contribution for Intersection of W.B. Dye Road & West Market Street - \$17,711.70

1.1.4 Water System

The City shall bear the cost for the W.B. Dye Waterline Replacement Project. The City shall also bear the cost of looping the water line from Kerr Way as shown on the approved construction plans, inside the Orchard Place Development, to the new waterline on West Market Street.

1.1.5 Total City Contribution

The City's total contribution for the above-mentioned items shall not exceed **\$62,511.77**, excluding the water system improvements.

Section 2: SURETY

Prior to commencing construction, the Developer shall post a letter of credit, in accordance with the Subdivision Regulations, for site stabilization and offsite infrastructure improvements included on the construction plans. Prior to the recording of the final subdivision plat, the Developer shall post a letter of credit in an amount specified by the City Planner, said amount being 25% greater than the estimated amount necessary to complete required improvements, including roads, sidewalks, drainage, and other improvements specified by the construction plans and plats of the development approved by the City and the Planning Commission. The Surety may be called for failure to comply with the provisions of this Agreement in whole or in part according to the terms of the Surety. The Surety will not be released until there has been full compliance with this Agreement and certification by a licensed engineer that the development has been completed in full compliance with the approved plat and construction plans.

Section 3: INTERPRETATION, VENUE, AND ATTORNEY'S FEES

This agreement shall bind the Developer upon execution and may not be revoked without permission of the City. This agreement shall be interpreted in accordance with Tennessee law and may only be enforced in the Circuit Court for Sumner County, Tennessee, and Tennessee appellate courts. In the event this Agreement is breached by the Developer and litigation is commenced, the Developer shall be responsible for the reasonable attorney's fees and expenses incurred by the City as a result of the Developer's breach.

Section 4: TRANSFERABILITY

Except for the sale of individual lots after recording the final plat, the Developer shall not transfer the subdivision proper without first giving notice to the City as to the name, address, and telephone number of the transferee. If it is the transferee's intention to develop this subdivision in accordance with the Agreement, the Developer agrees to provide the City an Assumption Agreement in which the transferee agrees to perform the improvements required under this Agreement and to provide the security needed to assure such performance. Said agreement will be subject to the approval of the City Attorney. The Developer shall remain liable under the terms of this Agreement unless an Assumption Agreement is entered into between the new owners and the City.

Section 5: TIME PERIOD FOR CONSTRUCTION

In consideration of the promise by the City to accept for maintenance the streets, utilities and other infrastructure covered by this agreement, the Developer agrees to be bound to complete within three (3) years, all improvements shown on the preliminary plat and construction plans and all things required by this agreement. The Developer further agrees that if due to unforeseen circumstances, he is unable to complete all work included in this agreement within the time specified above, but desires to complete said agreement to the satisfaction of the City, he will submit a written request for extension of the agreement period to the City at least sixty (60) days prior to the expiration of the existing agreement period, specifying the reason for his failure to complete the work as agreed and a prospective date for such completion. The Developer further agrees that if the letter-of-credit executed to secure the value of the work to be performed under this agreement is determined at the time an extension is sought to be inadequate due to rising costs to secure the cost of said improvements he will provide the additional security to bring the bond amount in line with current cost projections as made by the City. The City agrees that it will not unreasonably withhold approval of extensions where the Developer has complied with the requirements of notice to the City and provided the required additional security, if any be needed. The Developer understands that his failure to follow this extension procedure constitutes a breach of this agreement and places him in violation of the Subdivision Regulations. The Developer further understands that should he fail to complete any part of the work outlined in this agreement in a good and workmanlike manner the City shall reserve the right to withhold and withdraw all building permits and/or sewer service within the subdivision until all items of this Agreement have been fulfilled by the Developer. Extensions shall be for no more than one year and no more than two extensions shall be complete.

Section 6: ACCEPTANCE OF IMPROVEMENTS

Formal acceptance of improvements shall follow the procedure established in the Subdivision Regulations. Subsequent to acceptance by the City, the Developer shall have no claim, direct or implied, in the title or ownership of the improvements. The City, upon final approval and acceptance, will take full title to the improvements and will provide maintenance thereafter', except that the Developer is responsible for construction failures and defects in the subdivision improvements for a period of one (1) year after the date of final acceptance of the subdivision improvements. During this period, it shall remain the responsibility of the Developer to connect and cure these defects and failures.

Section 7: WARRANTY

The Developer warrants that all improvements to be accepted by the City will be free from defects in design, materials, or workmanship for a period of one (1) year from the date of acceptance by the City. The Developer shall immediately repair, at its own costs, all defects of any type whatsoever which occur within said one (1) year period. If repairs required herein are not timely completed, the City shall have the right, at its option, to make said repairs at the expense of the Developer. In such event, the City may call the Developer's surety to pay for said repairs. Additionally, the Developer shall execute a maintenance surety as required by the Subdivision Regulations.

Section 8: INSURANCE

The Developer shall purchase an owners and contractor's liability policy and public liability insurance policy in the amount of one million dollars (\$1,000,000.00) and name the City as an additional insured party. Developer further agrees to hold and name the City harmless from the claim of any person and further agrees to defend any action brought in any court against the City and to pay any judgments rendered against the City or against the facilities.

Section 9: NOTICES

All notices permitted or required under this Agreement shall be deemed given if hand-delivered, or mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

CITY: Office of the City Planner
City of Portland
100 S. Russell Street
Portland, TN 37148

DEVELOPER _____

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in multiple originals by persons properly authorized so to do on or as of the day and year first given.

Printed Name of Owner:

Signature of Owner:

Date

Printed Name of Developer, Company, & Title:

Address of Developer

Signature of Developer:

Date

STATE OF _____ COUNTY OF _____

Personally, appeared before me, the undersigned, a Notary Public in and for said county and state, _____, known to me to be the person who signed the foregoing instrument, and who acknowledged that he/she executed the within instrument for the purposes therein contained.

Witness my hand, at office this the _____ day of _____, _____.

Notary Public

My Commission Expires: _____

City of Portland, Tennessee

Mayor, Mike Callis

Date

City Recorder, Patricia Keen

Date

APPROVED AS TO FORM:

City Attorney, John Bradley

Date



CITY OF PORTLAND
BRYAN PRICE P.E. – CITY ENGINEER
100 SOUTH RUSSELL STREET
PORTLAND, TENNESSEE 37148
Telephone 615/325-6776
Fax 615/325-5345
Email Address: bprice@cityofportlandtn.gov

Brian Goodwin Engineering
Mr. Brian Goodwin
PO Box 680961
Franklin, TN 37068
Phone: 615-519-7943

Date: 6/8/2018

**Re: ORCHARD PLACE
REVISED CONSTRUCTION PLANS & DRAINAGE CALCULATIONS – REVIEW FINAL
PORTLAND PLANNING COMMISSION – PC NO: 00042**

Mr. Goodwin:

The Engineering Department has completed its review of the revised Construction Plans & Drainage Calculations for the above referenced project received in our office June 6, 2018. After review, the information submitted appears sufficient and meets the requirements of the Department.

Prior to issuance of a Portland Land Disturbance Permit a TDEC Notice of Coverage for Stormwater Discharges associated with Construction Runoff are required.

Prior to issuance of any Occupancy Permit an as-built of all drainage structures must be completed and submitted to the City.

Please note, City shall require a Pre-construction Meeting prior to issuance of a Land Disturbance Permit to ensure drainage from Kerr Way Cul-De-Sac and Lots 7, 8, 9, 10, 11, & 12 enter the detention pond on Lots 15 and 16 without a negative impact on the residential structures.

This letter serves as a written record of the review comments from the Engineering Department for the subject project. Should you have any questions, please feel free to contact.

Sincerely,

Bryan S. Price, P.E.
Portland City Engineer
BSP/00530

cc.
Jackie West
Carlton Cobb
Richard Graves